

VZCZCXRO4854
PP RUEHDE
DE RUEHKU #0972/01 0790924
ZNR UUUUU ZZH
P 200924Z MAR 06
FM AMEMBASSY KUWAIT
TO RUEHC/SECSTATE WASHDC PRIORITY 3578
INFO RUEHZM/GULF COOPERATION COUNCIL COLLECTIVE PRIORITY

UNCLAS SECTION 01 OF 03 KUWAIT 000972

SIPDIS

SENSITIVE
SIPDIS

FOR NEA/ARP, INL/HSTC AND G/TIP

E.O. 12958: N/A
TAGS: [ELAB](#) [PHUM](#) [KU](#) [TIP](#)
SUBJECT: FREEDOM AGENDA: THE PROPOSED NEW LABOR LAW:
CRITIQUES, CONTENT, AND PROSPECTS

REF: A. KUWAIT 804
[1](#)B. KUWAIT 768

[1](#)1. (U) Summary: The Government has identified passing a new Labor Law as one of its legislative priorities, though Post contacts doubt its passage in the short term. The Kuwait Bar Association held March 13 a seminar to debate the benefits of a proposed new Labor Law. The participants, representing most of the major sectors concerned with the labor law, criticized the new law sharply, especially for not adequately addressing expatriate labor issues and for not encouraging the modernizing of private sector and domestic (i.e. household) labor. The proposed law, like the current labor law, would not apply to domestic laborers, who would remain under the administrative responsibility of the Ministry of Interior. Despite the failings of the new law, it does contain TIP and human-rights-related provisions, such as criminalizing the exploitation of foreign workers through visa trading and charging workers fees to remain in the country. End Summary.

Prospects for the Labor Law's Passage

[1](#)2. (U) The new Government has called for greater political and economic reform, and included the Labor Law as one of its top priorities. Assistant Undersecretary for Labor Affairs at the Ministry of Social Affairs and Labor (MOSAL), Abdullah Hamad Al-Me'dhadi, told LES Political Specialist that the Council of Ministers has approved the law. It is now awaiting Amiri approval, after which it will be transferred to the relevant committee at the National Assembly. Absent a formal Government letter asking that it be moved to the top of the agenda, it could stay in the committee indefinitely. Dr. Salih Al-Shaykh, who is filling in for Al-Me'dhadi while he is on medical leave, further cast doubt on how soon the law would be passed when he told guests at a seminar on the Labor Law (see below) that there is still time to make changes.

Press Law Sets a Precedent?

[1](#)3. (SBU) Like the recently passed Press and Publications Law, the proposed Labor Law would update legislation that passed over 40 years ago. After years of discussion and delays, the Press Law was quickly whisked through the National Assembly. In the end, however, that law represented an incremental change, at best. The same can be expected of the Labor Law: it is unlikely that the Kuwaiti parliament will make the kind of significant changes that liberals and international observers would like. Whereas most liberals wanted to pass the Press and Publications Law and then refine it through amendments, liberals at the Labor Law meeting took a harder line, insisting that it should not be passed in its

current form. Post contacts, including two members of the committee in the National Assembly that handles the law, gave the impression that the law has little momentum and probably will not come up for serious discussion until after elections and the convening of the next National Assembly in October 2007. It is worth noting, however, that the Press and Publications Law passed faster than expected. End Comment.

Labor Law Seminar Presents Critiques of the Law

14. (U) The Kuwait Bar Association convened a seminar on March 13 to discuss the proposed new Labor Law, which would replace the 1964 Private Sector Labor Law. The seminar -- titled "The Proposed New Labor Law: Positives, Negatives and Aspirations" -- brought together a Member of Parliament (Ahmad Al-Mulaifi), the ILO Representative in Kuwait (Thabet Al-Haroun), an official from the Ministry of Social Affairs and Labor (MOSAL) (Salih Al-Shaykh), a representative of the Kuwait Chamber of Commerce (Yousef Al-Ali), a legal advisor to the Kuwaiti Courts (Abdul-Hadi Al-Jafeen), and a professor from Kuwait University (Jamal Al-Nakkas). With the exception of some positive remarks from the Chamber of Commerce and MOSAL representatives, the participants criticized the law sharply for not aggressively addressing the key labor issues in Kuwait.

15. (SBU) MP Al-Mulaifi criticized the law for not addressing the issue of residence permit ("Iqama") trading, attracting Kuwaitis to the private sector, and protecting foreign workers. He floated the idea of creating one or several publicly traded companies that would provide laborers to employers in Kuwait. This would wipe out the thousands of

KUWAIT 00000972 002 OF 003

smaller employment agencies, many of whom engage in Iqama trading. He said that MOSAL officials had rejected laws proposing this type of arrangement in the past because, as he told LES Political Assistant, they are "complicit" in visa trading and such a law would threaten their profits.

16. (U) ILO Representative Al-Haroun said the Government had failed to consult independent and international experts, and thus had come up with a law that does not meet modern labor standards. MOSAL's Al-Shaykh responded that they had consulted the relevant Kuwaiti institutions in preparing the law.

17. (U) Al-Jafeen criticized the law for failing to establish a set of courts for adjudicating labor issues. Al-Nakkas noted that there were benefits in the law, such as making accommodations for working women, but that the negatives outweighed the positives and the law needed to be restudied. For instance, the law does not mandate insurance for all workers, it allows the courts to dissolve labor unions, and it allows for "collective contracts" rather than "collective agreements." Dr. Al-Ali added that there are tens of articles that contain vague language and depend on the Minister to issue a decree with implementation details. He went on to say, however, that no law will be perfect, and that this law will prevent Kuwait from coming under international condemnation.

Domestic Labor

18. (U) The proposed law explicitly excludes domestic laborers (who, according to the General Manager of the Immigration Department at the Ministry of Interior, number 520,000 in Kuwait), as does the current Labor Law. In a December meeting with PolOff, Al-Haroun said the ILO wanted the law to include domestic laborers, but that there was no realistic chance that it would do so because Kuwaiti society would not support the idea. Al-Shaykh confirmed in a March

19 meeting with PolOff and LES Political Assistant that there was no thought of including domestic laborers in the Labor Law.

TIP and Human Rights Aspects of the Proposed Labor Law

19. (U) The most recent version of the draft law contains important provisions related to the State Department's Trafficking in Persons (TIP) Report and Country Reports on Human Rights Practices.

-- Article 132 imposes a prison sentence of up to 3 years and/or a fine of 1,000 - 5,000 Dinars (3,430 USD - 17,150 USD) for visa trading. Note: the law does not label it as visa trading, but rather says the following: "It is not permitted for a business owner to hire workers from outside the country or to use workers from inside the country then proceed to not offer them work with him or if it becomes clear that he does not really need them." (Article 10, par 2) End Note.)

-- Article 131 imposes a fine of up to 500 Dinars (1715 USD) for failing to declare accurately on an annual basis the number of foreign workers needed and actually employed. The same penalty applies for failure to prominently display a listing of pre-approved (by MOSAL) work rules and punishments for infractions of those rules. The fine will be doubled if it is repeated within three years.

-- Article 133 imposes a fine of up to 5000 Dinars (17,150 USD) and closure of the business for 3 - 6 months for recruitment agencies that charge any fees to workers for the privilege of finding them work or allowing them to stay in the country.

-- Article 16 mandates that apprentices and trainees be paid.

-- Article 18 bans children under 15 from working. Articles 19 and 20 limit the hours and industries in which children aged 15 - 20 can work, and mandates that they be given medical exams at least every six months.

-- Article 30 forbids a worker from being subjected to a probation period of more than 100 days, and from undergoing more than one probation period with the same employer.

-- Article 31 stipulates that subcontracted workers receive

KUWAIT 00000972 003 OF 003

treatment equal to regular employees of the subcontractor.

-- Article 32 mandates that free housing (or a housing stipend) and transport be provided for projects in outlying areas and that the housing be according to minimum standards set by MOSAL. (Note: Poor housing conditions are a major complaint of Bangladeshi and other low-skilled workers in Kuwait. End Note.)

-- Article 35 forbids the employer from pinning a violation on a worker without hearing and investigating the worker's defense. The violation and punishment must be provided to the worker in writing.

-- Article 36 forbids the employer from docking more than five days pay out of any month for a violation. If the punishment sum is greater than five-days' pay, it must be taken out of future months' pay.

-- Article 44 forbids the firing of a worker without cause or because of his union involvement or demanding his rights according to this law.

-- Article 46 lays out conditions when a worker can quit without notice and claim a severance payment, such as if the

employer subjects the employee to harassment, if the employer does not provide a safe work environment, if the employer falsely accuses the worker, if the employer committed fraud in signing the contract, or if the employer violates the terms of the contract

-- Chapters II and III (Articles 61 - 76) lay out expanded rest periods and vacations.

-- Chapter IV (Articles 77 - 94) mandates occupational safety and health.

-- Chapter V (Articles 95-116) sets out rules for unionization and collective contracts. The Ministry controls the licensing and policing of unions, which can then sign collective contracts. (Note: Whereas the current labor law explicitly states that foreigners cannot elect or be elected to leadership positions, the proposed law says all Kuwaitis have this right. It leaves ambiguity as to whether foreign workers can vote or be elected. In a conversation with PolOff, a lawyer from MOSAL gave PolOff opposing interpretations of this law: that it will be up to the Minister to issue instructions on non-Kuwaiti membership; and that it will be up to the union to decide whether to allow non-Kuwaitis to join as full members. The lack of an explicit grant of this right to foreigners probably means that they will not get it. End Note.)

***** *
For more reporting from Embassy Kuwait, visit:
<http://www.state.sgov.gov/p/nea/kuwait/?cable s>

Visit Kuwait's Classified Website:
<http://www.state.sgov.gov/p/nea/kuwait/>
***** *
LEBARON